MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018 / 2019

UIS 4612 – LAW OF INSOLVENCY

(All Sections / Groups)

11 MARCH 2019

Reading Time: 9.00 a.m. – 9.15 a.m.
(15 Minutes)
Answering Time: 9.15 a.m. – 12.15 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Attempt FOUR questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are only allowed to bring in CLEAN AND ORIGINAL COPIES of (i) Insolvency Act 1967; (ii) Insolvency Rules 2017; (iii) Insolvency Voluntary Arrangement Rules 2017; (iv) Companies Act 2016; (v) Companies (Winding-up Rules 1972 (incorporating latest amendments) and (vi) Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Candy Cat is a new actress in Malaysia. To maintain her celebrity status, she took a loan from Bank Kaya Berhad (BKB) to buy a luxury condominium to live in. The said condominium is located in Melaka and it was charged to BKB as a security for the housing loan facility for the sum of RM1,000,000-00. Candy Cat signed the Facility Agreement and Charge document on 10 January 2017. The Charge in favour of BKB was registered on 20 April 2017. Her boy friend, Donny Donald willingly stood as her guarantor for this loan facility.

Candy Cat attended Taiwan Golden Horse Award 2017 which was held in Taipei, Taiwan in January 2018. She then met Jack Lim a young billionaire from Taipei, Taiwan. One month later, she got engaged to him and Candy Cat decided to stay in Taipei until their wedding ceremony scheduled to be held in June 2018. Since January 2018, Candy Cat refused to pay the monthly instalment of the luxury condominium to BKB for more than three consecutive months as she is not living in the said condominium anymore.

BKB commenced the legal action against Candy Cat in Melaka High Court and Candy Cat failed to enter the appearance for the said suit. Judgment in Default was obtained on 21 July 2018 for the luxury condominium for the principal sum of RM1,000,000-00 and interest thereon and costs.

Based on the information above, discuss the following:

(a) Proper procedure for BKB to commence bankruptcy action against Candy Cat and Donny Donald. Do you think BKB can succeed it their claim?

(15 marks)

(b) Assuming that no bankruptcy proceedings has been initiated by BKB against Candy Cat, what is the possibility of Candy Cat avoiding any bankruptcy proceedings that may be taken against her by BKB under the new Insolvency Act 1967? Discuss.

(10 marks)

(Total: 25 marks)

QUESTION 2

Suppliers Sdn. Bhd. (SBB) applied to wind-up Garments Sdn. Bhd. (GSB) by a notice issued pursuant to section 466(1) Companies Act 2016 (CA 2016) following GBB's failure to pay its debts in accordance with a summary judgment obtained by SBB. Subsequently, SBB filed a petition for the winding-up on 5 September 2018 and appointed a provisional liquidator. At the same time, GSB's directors by special resolution on 5 September 2018, resolved that: GBB was unable to continue doing business; as such one Mr Makeover be appointed GBB's interim liquidator and that GBB be voluntarily wound-up.

Continued...

Subsequently, GBB applied for: (i) leave to be wound-up voluntarily; (ii) a stay of the creditor's petition commenced by SBB and (iii) Mr. Makeover be appointed as GBB's Liquidator. SBB's solicitors were only informed of the voluntary winding-up and the appointment of Mr. Makeover during the first case management of GBB's petition for voluntary winding-up. Accordingly, SBB opposed GBB's applications for the appointment of Mr. Makeover as liquidator, voluntary winding-up and stay of SBB's creditor's petition for winding-up.

Advise:

(a) On the validity of GBB's application for leave to commence voluntary winding-up proceedings when a creditor's petition had already been filed against it.

(10 marks)

(b) Whether the High Court should grant GBB's application for the appointment of Mr. Makeover as a Liquidator.

(4 marks)

(c) Whether the High Court should grant a stay of the creditor's petition commenced by SBB.

(11 marks)
(Total: 25 marks)

QUESTION 3

Ms. Diamond Isabella is a world famous fashion designer from Australia. Ms. Diamond Isabella's best friend is Ms. Minnie Shan, who owns a factory in Malaysia and manufacture shirt and clothing for Ms. Diamond Isabella. Ms. Minnie Shan's factory is called *Minnie & Diamond Sdn. Bhd.* (MDSB).

MDSB does not have enough capital to expand their business. Thus, MDSB has decided to obtain a loan of RM100,000-00 from Bank Mewah Berhad (BMB). Ms. Diamond Isabella has agreed to become guarantor for the loan to MDSB even though she does not live or work in Malaysia at all.

On 10 December 2018, BMB obtained Judgment in Default against MDSB and Ms. Diamond Isabella for the sum of RM100,000-00 and interests thereon because MDSB has neglected, failed and refused to repay the instalment for three consecutive months despite of numerous notices been sent to them.

Continued...

On 15 December 2018, BMB served a statutory notice of demand on MDSB requiring it to pay the sum of RM100,000-00 and interests thereon. On the same day, the Bank also caused a Bankruptcy Notice to be issued on Ms. Diamond Isabella for the sum of RM100,000-00 and interests thereon.

On 25 January 2019, BMB presented a Winding Up Petition against MDSB and Bankruptcy Petition against Ms. Diamond Isabella. On 2 March 2019, MDSB was wound up and Ms. Diamond Isabella was adjudged a bankrupt.

Advise:

(i) MDSB and Ms. Diamond Isabella in respect of the proceedings taken against each of them.

(20 marks)

(ii) Whether BMB can accept any payment from Mr. Brian Perang, husband to Ms. Minnie Shan to settle the debt on behalf of MDSB and Ms. Diamond Isabella.

(5 marks)
(Total: 25 marks)

Answer EITHER Question 4 (a) OR Question 4 (b)

QUESTION 4 (a)

On 15 September 2018, Sportswear Manufacturers Sdn. Bhd. (SMSB) supplied clothing worth RM600,000-00 on three months credit terms, to Wellness Zone Sdn. Bhd. (WZSB). However as SMSB failed to pay within the stipulated period, WZSB issued a notice of demand under section 466(1) of the Companies Act 2016, dated 14 December 2018, demanding payment of RM600,000-00 plus interest and costs within 21 days of the date thereof. The notice was handed to Maria, a receptionist employed by WZSB the same day. WZSB failed to pay within the specified period.

On 2 January 2019, SMSB presented a winding up petition under section 465(1)(e) of the Companies Act 2016 on the grounds that the WZSB was unable to pay its debts. An affidavit verifying the petition was filed four days before the petition. The said petition was served on WZSB's place of business as well as on its solicitors, M/S Peguam & Co., Advocates & Solicitors.

The petition is fixed for hearing on 6 April 2019.

Continued...

WZSB wish to set aside the winding-up petition on the grounds that they are not insolvent as they have assets which, if realised would enable them to pay the debt.

Advise WZSB.

(Total: 25 marks)

OR

QUESTION 4 (b)

Feroz and Nazar were brothers who set up a partnership in 2005 producing hand painted batik textiles. Feroz was the artist whilst Nazar ran the business. As the business grew they decided to incorporate it into Fernaz Sdn. Bhd. (FSB). Feroz and Nazar each held 45% shares whilst the remaining 5% was held by their mother to ensure balance in the voting. At the general meeting in 2012 a resolution was passed removing Feroz as a co-Director and instead appointing Nazar as the sole director. Feroz, although extremely upset continued in the family business. However in the last two years FSB has been facing financial difficulties. Recently Bank Kaya Bhd. commenced bankruptcy proceedings against Feroz, as the guarantor for overdraft facilities granted to FSB in the sum of RM300,000-00. Feroz wishes to set aside the bankruptcy notice and at the same time apply for the winding-up of FSB under s.465 (1)(h) of the Companies Act 2016.

Advise Feroz.

(Total: 25 marks)

End of Page